

SERVICE DATE - AUGUST 9, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 635X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN GRATIOT COUNTY, MI

Decided: August 6, 2004

CSX Transportation, Inc. (CSXT) and Mid-Michigan Railroad, Inc. (MMR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service for CSXT to abandon and MMR to discontinue service over approximately 5.5 miles of railroad from milepost CBE-40.00 at Alma, to milepost CBE-45.5 at Elwell, in Gratiot County, MI. Notice of the exemption was served and published in the Federal Register (68 FR 38420) on June 27, 2003.¹

By decision and notice of interim trail use or abandonment (NITU) served on July 29, 2003, the proceeding was reopened, and the Friends of Fred Meijer Heartland Trail (Heartland Trail) was authorized to negotiate an interim trail use/rail banking agreement with CSXT for the entire line pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The negotiating period under the NITU was scheduled to expire on January 25, 2004, but was extended until July 23, 2004, by a decision served January 22, 2004.²

On August 3, 2004, CSXT filed a request for an extension of the NITU negotiating period until January 23, 2005. CSXT states that it and Heartland Trail have been unable to finalize trail use negotiations. Additionally, CSXT requests an extension of the consummation notice filing deadline until March 23, 2005.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to

¹ The notice served June 27, 2003, embraced STB Docket No. AB-364 (Sub-No. 9X), Mid-Michigan Railroad, Inc.–Discontinuance of Service Exemption–in Gratiot County, MI.

² The July 29, 2003 decision also imposed a public use condition that expired on January 25, 2004, and three environmental conditions consisting of: (1) a National Geodetic Survey (NGS) condition; (2) a State of Michigan Department of Environmental Quality (MIDEQ) condition; and (3) a historic preservation condition. The historic preservation condition was removed by decision served October 28, 2003. The October 28 decision also noted that the NGS and MIDEQ conditions imposed in the July 29 decision remain in effect.

grant an extension. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiation period will be extended to January 23, 2005, and the consummation notice filing deadline will be extended to March 23, 2005.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request for an extension of the negotiating period and its request for an extension of time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended to January 23, 2005.
3. The authority to abandon must be exercised on or before March 23, 2005.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary